

Introduced by Senator Speier

February 22, 2005

An act to amend Section 1170 of, and to add Section 2057 to, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 618, as introduced, Speier. Sentencing: mandatory programs.

Under existing law, the Legislature finds and declares that programs should be available for inmates, including educational programs that are designed to prepare nonviolent felony offenders for successful reintegration into the community. Under existing law, the Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. Existing law requires the Director of Corrections to implement in every state prison literacy programs that are designed to ensure that, upon parole, inmates are able to achieve a 9th grade reading level.

This bill would delete those findings and declarations and instead require a court, prior to sentencing a convicted felon, to order an assessment of the person's treatment, literacy, and vocational needs. Any sentence imposed upon the person would be required to include an order for completion of relevant programs to satisfy those identified needs while in prison, and would include recommendations for aftercare programs during the parole period. The bill would require the Director of Corrections to implement programs in the state prisons and through its parole offices to address the needs identified in those assessments and to assure the appropriate programs are provided to inmates, as required by these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code is amended to
2 read:

3 1170. (a) (1) The Legislature finds and declares that the
4 purpose of imprisonment for crime is punishment. This purpose
5 is best served by terms proportionate to the seriousness of the
6 offense with provision for uniformity in the sentences of
7 offenders committing the same offense under similar
8 circumstances. The Legislature further finds and declares that the
9 elimination of disparity and the provision of uniformity of
10 sentences can best be achieved by determinate sentences fixed by
11 statute in proportion to the seriousness of the offense as
12 determined by the Legislature to be imposed by the court with
13 specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further
15 finds and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare ~~nonviolent~~ felony offenders for successful
18 reentry into the community. ~~The Legislature encourages the~~
19 ~~development of policies and programs designed to educate and~~
20 ~~rehabilitate nonviolent felony offenders. In implementing this~~
21 ~~section, the Department of Corrections is encouraged to give~~
22 ~~priority enrollment in programs to promote successful return to~~
23 ~~the community to an inmate with a short remaining term of~~
24 ~~commitment and a release date that would allow him or her~~
25 ~~adequate time to complete the program.~~

26 (3) (A) In any case in which the punishment prescribed by
27 statute for a person convicted of a public offense is a term of
28 imprisonment in the state prison of any specification of three
29 time periods, the court shall sentence the defendant to one of the
30 terms of imprisonment specified unless the convicted person is
31 given any other disposition provided by law, including a fine,
32 jail, probation, or the suspension of imposition or execution of
33 sentence or is sentenced pursuant to subdivision (b) of Section
34 1168 because he or she had committed his or her crime prior to
35 July 1, 1977. In sentencing the convicted person, the court shall
36 apply the sentencing rules of the Judicial Council. The court,
37 unless it determines that there are circumstances in mitigation of
38 the punishment prescribed, shall also impose any other term that

1 it is required by law to impose as an additional term. Nothing in
2 this article shall affect any provision of law that imposes the
3 death penalty, that authorizes or restricts the granting of
4 probation or suspending the execution or imposition of sentence,
5 or expressly provides for imprisonment in the state prison for
6 life. In any case in which the amount of preimprisonment credit
7 under Section 2900.5 or any other provision of law is equal to or
8 exceeds any sentence imposed pursuant to this chapter, the entire
9 sentence shall be deemed to have been served and the defendant
10 shall not be actually delivered to the custody of the Director of
11 Corrections. The court shall advise the defendant that he or she
12 shall serve a period of parole and order the defendant to report to
13 the parole office closest to the defendant's last legal residence,
14 unless the in-custody credits equal the total sentence, including
15 both confinement time and the period of parole. The sentence
16 shall be deemed a separate prior prison term under Section 667.5,
17 and a copy of the judgment and other necessary documentation
18 shall be forwarded to the Director of Corrections.

19 *(B) Prior to sentencing a convicted person pursuant to this*
20 *section, the court shall order an assessment of the person's*
21 *treatment, literacy, and vocational needs. Any sentence imposed*
22 *pursuant to this section shall include an order for completion of*
23 *relevant programs to satisfy those needs identified in the*
24 *assessment while in prison, and shall include recommendations*
25 *for aftercare programs during the parole period.*

26 (b) When a judgment of imprisonment is to be imposed and
27 the statute specifies three possible terms, the court shall order
28 imposition of the middle term, unless there are circumstances in
29 aggravation or mitigation of the crime. At least four days prior to
30 the time set for imposition of judgment, either party or the
31 victim, or the family of the victim if the victim is deceased, may
32 submit a statement in aggravation or mitigation to dispute facts in
33 the record or the probation officer's report, or to present
34 additional facts. In determining whether there are circumstances
35 that justify imposition of the upper or lower term, the court may
36 consider the record in the case, the probation officer's report,
37 other reports including reports received pursuant to Section
38 1203.03 and statements in aggravation or mitigation submitted by
39 the prosecution, the defendant, or the victim, or the family of the
40 victim if the victim is deceased, and any further evidence

1 introduced at the sentencing hearing. The court shall set forth on
2 the record the facts and reasons for imposing the upper or lower
3 term. The court may not impose an upper term by using the fact
4 of any enhancement upon which sentence is imposed under any
5 provision of law. A term of imprisonment shall not be specified
6 if imposition of sentence is suspended.

7 (c) The court shall state the reasons for its sentence choice on
8 the record at the time of sentencing. The court shall also inform
9 the defendant that as part of the sentence after expiration of the
10 term he or she may be on parole for a period as provided in
11 Section 3000.

12 (d) When a defendant subject to this section or subdivision (b)
13 of Section 1168 has been sentenced to be imprisoned in the state
14 prison and has been committed to the custody of the Director of
15 Corrections, the court may, within 120 days of the date of
16 commitment on its own motion, or at any time upon the
17 recommendation of the Director of Corrections or the Board of
18 Prison Terms, recall the sentence and commitment previously
19 ordered and resentence the defendant in the same manner as if he
20 or she had not previously been sentenced, provided the new
21 sentence, if any, is no greater than the initial sentence. The
22 resentence under this subdivision shall apply the sentencing rules
23 of the Judicial Council so as to eliminate disparity of sentences
24 and to promote uniformity of sentencing. Credit shall be given
25 for time served.

26 (e) (1) Notwithstanding any other law and consistent with
27 paragraph (1) of subdivision (a) of Section 1170, if the Director
28 of Corrections or the Board of Prison Terms or both determine
29 that a prisoner satisfies the criteria set forth in paragraph (2), the
30 director or the board may recommend to the court that the
31 prisoner's sentence be recalled.

32 (2) The court shall have the discretion to resentence or recall if
33 the court finds both of the following:

34 (A) The prisoner is terminally ill with an incurable condition
35 caused by an illness or disease that would produce death within
36 six months, as determined by a physician employed by the
37 department.

38 (B) The conditions under which the prisoner would be
39 released or receive treatment do not pose a threat to public safety.

1 The Board of Prison Terms shall make findings pursuant to this
2 subdivision before making a recommendation for resentencing or
3 recall to the court. This subdivision does not apply to a prisoner
4 sentenced to death or a term of life without the possibility of
5 parole.

6 (3) Within 10 days of receipt of a positive recommendation by
7 the director or the board, the court shall hold a hearing to
8 consider whether the prisoner's sentence should be recalled.

9 (4) The prisoner or his or her family member or designee may
10 request consideration for recall and resentencing by contacting
11 the chief medical officer at the prison or the Director of
12 Corrections. Upon receipt of the request, if the director
13 determines that the prisoner satisfies the criteria set forth in
14 paragraph (2), the director or board may recommend to the court
15 that the prisoner's sentence be recalled. The director shall submit
16 a recommendation for release within 30 days in the case of
17 inmates sentenced to determinate terms and, in the case of
18 inmates sentenced to indeterminate terms, the director may make
19 a recommendation to the Board of Prison Terms with respect to
20 the inmates who have applied under this section. The board shall
21 consider this information and make an independent judgment
22 pursuant to paragraph (2) and make findings related thereto
23 before rejecting the request or making a recommendation to the
24 court. This action shall be taken at the next lawfully noticed
25 board meeting.

26 (5) Any recommendation for recall submitted to the court by
27 the Director of Corrections or the Board of Prison Terms shall
28 include one or more medical evaluations, a postrelease plan, and
29 findings pursuant to paragraph (2).

30 (6) If possible, the matter shall be heard before the same judge
31 of the court who sentenced the prisoner.

32 (f) Any sentence imposed under this article shall be subject to
33 the provisions of Sections 3000 and 3057 and any other
34 applicable provisions of law.

35 (g) A sentence to state prison for a determinate term for which
36 only one term is specified, is a sentence to state prison under this
37 section.

38 SEC. 2. Section 2057 is added to the Penal Code, to read:

39 2057. The Director of Corrections shall implement programs
40 in the state prisons and through its parole offices to address the

1 needs of inmates identified in the assessments performed
2 pursuant to subparagraph (B) of paragraph (3) of subdivision (a)
3 of Section 1170 and to assure that programs are provided to
4 inmates to satisfy the requirements of court orders imposed
5 pursuant to subparagraph (B) of paragraph (3) of subdivision (a)
6 of Section 1170.

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